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SPONSOR(s): \_\_\_\_\_

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HOUSE OF REPRESENTATIVES [OR DELAWARE STATE SENATE]

146th GENERAL ASSEMBLY

HOUSE / SENATE BILL NO. \_\_\_\_\_

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO THE OIL POLLUTION ACT (OPA), CHAPTER 62, SECTIONS 6202, 6208 AND 6209, BY ADDING THE DEFINITIONS OF “OFFSHORE FACILITY” AND “OIL” AND DELETING THE DEFINITION OF “SHIP” AND DELETING ANY REFERENCES OF “SHIP” THEREIN; IN SECTION 6208, DELETING LIMITS OF LIABILITY FOR PERSONS LIABLE FOR OIL POLLUTION; AND IN SECTION 6209, ADDING THAT THE OWNER OR OPERATOR OF A VESSEL OR OFFSHORE FACILITY SHALL ESTABLISH AND MAINTAIN EVIDENCE OFFINANCIAL RESPONSIBILITY BY OBTAINING A CERTIFICATE OF FINANCIAL RESPONSIBILITY ISSUED BY THE UNITED STATES COAST GUARD PURSUANT TO THE REQUIREMENT OF THE OIL POLLUTION ACT OF 1990, 33 U.S.C. SECTION 2701, ET. SEQ., AND REGULATIONS PROMULGATED THEREUNDER.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 7, Chapter 62, Section 6202, by inserting new definitions for “Offshore facility”, “Oil” or “Oils” as underlined below, deleting the definition of “Ship” through strikeout, and renumbering, as follows:

Amend OPA  
1.12.2012/revised 11/8/12  
EM112012

§ 6202. Definitions.

The following words and phrases shall have the meanings ascribed to them in this chapter unless the context clearly indicates otherwise:

- (1) "Claim" shall mean a demand in writing for damages.
- (2) "Claimant" shall mean anyone who asserts a claim.
- (3) "Cleanup costs" shall mean costs of reasonable measures taken, after an incident has occurred, to prevent, minimize or mitigate further oil pollution from that incident.
- (4) "Discharge" shall mean any emission, intentional or unintentional, and shall include spilling, leaking, pumping, pouring, emptying or dumping.
- (5) "Facility" shall mean a structure or group of structures (other than a vessel or vessels) including trucks, pipelines, bulk storage tanks and tank cars, used for the purpose of transporting, producing, processing, storing, transferring or handling oil.
- (6) "Guarantor" shall mean the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator.
- (7) "Incident" shall mean any occurrence or series of occurrences, involving 1 or more vessels, facilities or any combination thereof, which causes or poses any threat of oil pollution in or upon the waters and lands of the State.
- (8) "Offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;
- (98) "Oil" or "oils" shall mean oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S. C. 9601) and which is subject to the provisions of that Act [42 U.S.C. 9601 et seq.] enacted as of the date of enactment hereof. ~~that is liquid at atmospheric temperature and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil.~~
- (109) "Oil pollution" shall mean any discharge of oil that results in a film on, emulsion in or sludge beneath the waters of the State or its shoreline.

(110) "Operator" shall mean:

- a. In the case of a vessel, a charterer by demise or any other person who is responsible for the operation, manning, victualing and supplying of the vessel; or
- b. In the case of a facility, any person responsible for the operation of the facility by agreement with the owner.

(124) "Owner" shall mean any person holding title to, or, in the absence of title, any other indicia of ownership of a vessel or facility, but does not include a person having only a security interest in, or security title to, a vessel or facility, under a contract of conditional sale, an equipment trust, a chattel or corporate mortgage, a lease which is the functional equivalent of an extension of credit or any similar instrument.

(132) "Person" shall mean an individual, firm, corporation, association or partnership.

(143) "Person in charge" shall mean the individual immediately responsible for the operation of a vessel or facility.

(154) "Refinery" shall mean a terminal which receives crude oil for the purpose of refinement.

(165) "Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control.

~~(16) "Ship" shall mean any vessel carrying oil in bulk as cargo.~~

(176) "Terminal" shall mean a facility, located within the boundaries of the State which receives oil in bulk directly from any vessel, offshore production facility, offshore port facility or onshore pipeline.

(187) "Vessel" shall mean every description of watercraft or other artificial contrivance used, or capable of being used, as a means of water transportation.

(198) "Waters of the State" shall mean those waters within the boundaries of the State as defined in § 201 of Title 29, including those waters of the territorial sea which are in direct contact with the coast of Delaware and extending from the line of ordinary low water seaward for a distance of 3 geographical miles.

Section 2. Amending Title 7, Chapter 62, Section 6208, deleting the monetary limitation of liability through strikeout, and requiring a Certification of Financial Responsibility to be issued by the United States Coast Guard, by underlining, as follows:

§ 6208. Liability.

(a) Subject to subsections (b) and (e) of this section, the owner and operator of a vessel or of a facility, which is the source of, or poses a threat of, oil pollution, shall be jointly, severally and strictly liable for all damages for which a claim may be asserted under § 6207 of this title.

~~(b) Except when the incident is caused by gross negligence or willful misconduct within the privity or knowledge of the owner or operator, or when the incident is caused by a gross or willful violation by the owner or operator of applicable safety, construction or operating standards or regulations of the State or when the owner or operator fails or refuses to provide a certificate of financial responsibility as required by subsection (d) of this section, the total liability under subsection (a) of this section shall not exceed:~~

~~(1) In the case of a vessel other than a ship, \$150 per gross ton;~~

~~(2) In the case of a ship, \$300 per gross ton or \$250,000, whichever is greater, up to a maximum of \$30,000,000; or~~

~~(3) In the case of a facility, \$50,000,000 or such lesser limit as is established under subsection (e) of this section.~~

(eb) There shall be no liability under subsection (a) of this section:

(1) To the extent that the incident is caused by an act of war, hostilities, civil war or insurrection, or by a natural phenomenon of an unforeseen, exceptional, inevitable and irresistible character;

(2) As to a particular claimant, where the incident or the economic loss is caused by the gross negligence or willful misconduct of that claimant.

~~—(d) A certificate of financial responsibility, duly issued or approved by the Secretary, shall be an absolute condition precedent to any limitation of liability under this section.~~

~~—(e) The Secretary shall issue regulations establishing limits of liability, up to \$50,000,000, for various classes of facilities. These regulations shall take into account the size, type, location, oil storage and handling capacity, and other matters relating to the likelihood of incidents as to those classes. Such limits shall, to the extent practicable, be comparable to those limits established under paragraph (b)(2) of this section, taking into account the relative potential threat of oil pollution. In no case shall it exceed the limits imposed by the federal government.~~

~~—(f) The Secretary shall, from time to time, report to the General Assembly on the desirability of adjusting the monetary limitation of liability specified in subsection (b) of this section.~~

(cg) In addition to the damages for which claims may be asserted under § 6207 of this title, and without regard to the limitation of liability provided in this section the owner, operator or

guarantor shall be liable to the claimant for such interest as may be awarded in the discretion of the court as well as court costs and attorneys' fees.

(dh) Nothing in this chapter shall bar a cause of action that an owner or operator, subject to liability under subsection (a) of this section, or a guarantor has or would have, by reason of subrogation or otherwise, against any person or governmental entity other than the State and its agencies or subdivisions.

Section 3. Amending Section 6209, deleting through strikeout and insertion of new language by underlining, as follows:

§ 6209. Financial responsibility.

~~(a) The owner or operator of any vessel (except a nonself propelled barge that does not carry oil as fuel or cargo) over 300 gross tons, which uses the waters of the State shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to satisfy the maximum amount of liability applicable to that vessel under § 6208(b) of this title. Financial responsibility may be established by any 1 or any combination of the following methods: Evidence of insurance, guarantee, surety bond or qualification as a self insurer. Any bond filed shall be issued by a bonding company authorized to do business in the State. In cases where an owner or operator owns, operates or charters more than 1 vessel subject to this subsection, evidence of financial responsibility must be established to meet the maximum liability applicable to the largest of such vessels.~~

~~(ba) The owner or operator of a vessel or offshore facility shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility by obtaining a Certificate of Financial Responsibility issued by the United States Coast Guard pursuant to the requirements of the Oil Pollution Act of 1990, 33 U.S.C. Section 2701, et. seq. (OPA), and regulations promulgated thereunder, enacted as of the date of enactment hereof, sufficient to satisfy the maximum amount of liability applicable to that facility under § 6208 (b) of this title. An owner or operator of a vessel or offshore facility that is not required by OPA to establish and maintain such evidence of financial responsibility shall be exempt from the requirements of this subsection, and from subsections (b) and (c) of this section.~~

(eb) The master or operator of any vessel or offshore facility subject to this chapter shall have in his or her possession at all times certification that the financial responsibility provisions of this section have been complied with. Pilots of vessels holding a license issued by the State shall demand that such certification of financial responsibility be produced before providing any pilot service to said vessel.

(dc) The owner or operator of any vessel or offshore facility subject to this chapter who, upon request, does not produce a COFR issued by the U.S. Coast Guard pursuant to OPA certification furnished by the Secretary that the financial responsibility provisions of this section have been

~~complied with~~ shall be punished by a fine of not less than \$5,000 nor more than \$15,000 for each such violation.

(ed) Any claim authorized by § 6207 of this title may be asserted directly against any guarantor providing evidence of financial responsibility as required by the U.S. Coast Guard pursuant to OPA. In defending such claim, the guarantor shall be entitled to invoke all rights and defenses which would be available to the owner or operator under this title. He or she shall also be entitled to invoke the defense that the incident was caused by the wilful misconduct of the owner or operator, but shall not be entitled to invoke any other defense which he or she might have been entitled to invoke in proceedings brought by the owner or operator against him or her.

## SYNOPSIS

The intent of this bill is to add a new definition for “offshore facility”, “oil” and “oils,” delete the definition of “ship,” eliminate a monetary cap for liability for damages, and to require that a Certificate of Financial Responsibility (COFR) be issued by the U.S. Coast Guard, pursuant to the requirements of the Oil Pollution Act of 1990, 33 U.S.C. Section 2701et seq., and regulations promulgated thereunder, instead of the issuance of a COFR by the Secretary of the Department of Natural Resources and Environmental Control.